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Tuesday, 21 June 2011, 10 a.m.
New York

President:	Mr. Messone	(Gabon)
Members:	Bosnia and Herzegovina	Mr. Barbalić
	Brazil	Mrs. Dunlop
	China	Mr. Wang Min
	Colombia	Mr. Osorio
	France	Mr. Araud
	Germany	Mr. Berger
	India	Mr. Hardeep Singh Puri
	Lebanon	Mr. Salam
	Nigeria	Mrs. Ogwu
	Portugal	Mr. Moraes Cabral
	Russian Federation	Mr. Churkin
	South Africa	Mr. Mashabane
	United Kingdom of Great Britain and Northern Ireland	Sir Mark Lyall Grant
	United States of America	Mr. Dunn

Agenda

The situation in Somalia

Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (S/2011/360)

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The meeting was called to order at 10.10 a.m.

Adoption of the agenda

The agenda was adopted.

The situation in Somalia

Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (S/2011/360)

The President (*spoke in French*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of Somalia to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite Ms. Patricia O'Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2011/360, which contains the report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts.

I now give the floor to Ms. O'Brien.

Ms. O'Brien: I am pleased to have this opportunity to present the report before the Council on behalf of the Secretary-General (S/2011/360).

The Secretary-General has consistently advocated for the international community to take action to counter piracy and to respond in the most proactive way possible. He has pressed the United Nations and other international organizations to do more to contribute to a solution to this complex problem that poses so many challenges. The Council will recall that the Secretary-General dispatched me on a mission to Kenya as far back as March 2009 to discuss the issue with Kenyan authorities and to engage with the United Nations offices active on the ground. Most recently, in April, he dispatched me again to represent him at the conference organized and hosted by the Government of the United Arab Emirates. The theme of the conference was "Global challenge, regional responses: forging a common approach to maritime piracy". For my Office, the piracy dossier remains an active and important one, which reflects the Security Council's close attention to this pressing issue.

The human cost of piracy off the coast of Somalia is incalculable, with killings and widespread hostage-taking of sailors. The increasing number of incidents of piracy, the escalation of violence and the expanding geographical scope of the attacks are all extremely worrying. The commercial cost of this scourge is also very high. As I said when presenting the previous report (S/2010/394) on behalf of the Secretary-General in August last year (see S/PV.6374), the problem of piracy clearly demonstrates the increasing interdependence of States and people in a globalized world. The number and diversity of States and organizations with a stake in finding a solution provides strong evidence of this fact, with human welfare and commercial and security interests remaining under serious threat.

Against this background, the Secretary-General's report on the modalities for the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court, is a timely contribution that I believe will assist the Security Council's deliberations. It has had input from my Office, the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), the Department of Political Affairs, the United Nations Political Office for Somalia (UNPOS), the Department of Peacekeeping Operations, the Department of Safety and Security (DSS), the Office of the High Commissioner for Human Rights and INTERPOL. In responding to the Security Council's request in resolution 1976 (2011), we have taken into account the work of the Contact Group on Piracy off the Coast of Somalia. I and other senior members of the Office of Legal Affairs have also consulted a number of concerned regional States.

The report (S/2011/30, annex) of the Secretary-General's Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia, Mr. Jack Lang, has been highly praised for comprehensively addressing the operational, security, jurisdictional and economic aspects of piracy off the coast of Somalia, and for setting out an emergency plan focused on Somalia. His report brings together, for the first time, all of the facets of the problem, and makes concrete suggestions for action.

By making specific recommendations for the establishment of three Somali specialized anti-piracy courts, he has sharpened the debate and laid the ground for the detailed assessment of the modalities for such courts, as requested by the Security Council. Two aspects of Mr. Lang's report, in particular, have provided the impetus for productive inquiries by my Office, namely, the availability of legal experts among the Somali diaspora to add impetus to the development of Somali specialized courts and the need to disrupt the activities of the financiers and planners of piracy. The results of our consultations on the basis of these aspects highlighted by Mr. Lang are set out in annexes III and IV, respectively, to the Secretary-General's report.

Mr. Lang noted in his report that the strengthening of the rule of law in Somalia remained the guiding principle underlying the proposal for the establishment of Somali specialized anti-piracy courts. The legal and practical considerations for the establishment of such courts include such matters as the constitutional and legal basis in Somalia; the need for adequate criminal and procedural legislation for the prosecution of pirates; a sufficient number of trained judges and other legal professionals; security considerations; sufficient prison accommodations that comply with international standards; financing; and the timeline for the establishment of such courts. These are the modalities that are the subject of the Secretary-General's report.

The report contains a factual assessment of these modalities, based on the information that is set out in the five annexes to the report and the consultations with concerned regional States that my Office and I have conducted. I would like to emphasize from the outset that, if the Council should wish to mandate the Secretary-General to look in greater depth at any of the particular modalities considered in the report, my Office and I stand ready to do so. Furthermore, if the Council wishes to request the Secretary-General actively to address any of the modalities with a view to moving towards the establishment of Somali specialized courts, we will do so as a matter of priority.

We were greatly assisted in the preparation of the Secretary-General's report by the fact that UNDP, UNODC and UNPOS are active on the ground in Somalia in assisting Somali authorities to address some of these matters. UNDP and UNODC are working to develop the capacity of the courts in Somaliland and Puntland to conduct piracy prosecutions in conformity with international standards. The report draws on that experience in assessing, in section II, the modalities for the establishment of specialized anti-piracy courts in Somalia and, in section III, the modalities for the establishment of an extraterritorial Somali anti-piracy court located in another State in the region.

Before outlining the content of those two sections of the report, I would like to mention an initial point as to the scope of the report. Paragraph 26 of Security Council resolution 1976 (2011) asks the Secretary-General to report on the modalities for the establishment of specialized Somali courts to try suspected pirates. The resolution does not specify whether the recommendation concerns the establishment of new Somali courts, the establishment of new specialized chambers within existing Somali courts or the development of the capacity of the existing assize sections within Somali courts, which have jurisdiction to hear piracy cases.

As that was not specified in the Security Council resolution, nor in Mr. Lang's report that led to it, the Secretary-General's report deals with all three of these possibilities. The Secretary-General's report also makes it clear that it would be for the Somali authorities to determine whether the establishment of new courts, or new specialized chambers within existing courts, would be compatible with the relevant provisions of the 1960 Constitution of the Somali Republic and the 2004 Transitional Federal Charter for the Somali Republic.

To address Mr. Lang's recommendation regarding specialized courts in Somaliland and Puntland, UNDP and UNODC are engaged in programmes of assistance in the courts in those regions to build the capacity of the assize sections to try piracy cases. This important work is ongoing, and it is estimated that it will take around three years to bring piracy trials up to international standards. This will be a key development, because the courts in Somaliland and Puntland are conducting large numbers of prosecutions. Two hundred and ninety cases have been concluded or are ongoing in Puntland, with 94 cases in Somaliland.

The programmes of assistance are aimed at increasing the numbers of prosecutions in each region by about 20 cases per year, with each case involving about 10 accused. Achieving international standards will be a critical step, because it will open the way for

naval States to be able to enter into arrangements with Somali authorities for the transfer of piracy suspects apprehended at sea to Somaliland and Puntland for prosecution.

The timeline of three years could possibly be shortened through the use of international experts to assist and mentor local professionals. Initial research by my Office confirms that there are legal professionals among the Somali diaspora who could be contacted to determine whether they would be willing and able to play that role.

A further key step in opening the way for naval States to transfer suspects apprehended at sea to Somalia would be the building of new prisons in Somaliland and Puntland to provide a total of 1,000 prison spaces that complied with international standards. That will take about two years to achieve.

The total cost of these UNDP and UNODC programmes of assistance over the next three years, both in relation to he courts and the prisons, is calculated at approximately $24 million. Salary and security costs would be likely to increase if international experts were deployed to assist the development of trial capacity. The challenges facing these programmes of assistance in Somaliland and Puntland include critically out of date criminal and procedural codes and a shortage of trained judges and other legal professionals.

As I emphasized in my introduction, an extraterritorial Somali court could be a new court established for the purpose located extraterritorially, a new specialized chamber established within an existing court located extraterritorially or an existing section of a Somali court located extraterritorially. In any of these events, the determination as to whether such court or chamber would be compatible with the relevant Somali constitutional provisions, or whether an amendment of the Transitional Federal Charter would be required for that purpose, would be for Somali authorities to make. They would also need to consider the need for a specific legislative basis for the court or chamber.

The views of the Transitional Federal Government and Somali regional authorities are important in the consideration of the proposal for the establishment of an extraterritorial Somali court or special chamber, as are the views of the States in the region that could potentially host such a court or special chamber. I and other senior members of my Office therefore conducted three sets of consultations, including in the region. We also sought views in writing. Those consulted were the Transitional Federal Government of Somalia and the regional authorities in Somaliland, Puntland and Galmadug, and Tanzania, Kenya, the Seychelles, Mauritius and Djibouti.

The Transitional Federal Government of Somalia and Somali regional authorities were not favourable to the location of a Somali court outside of Somalia. In the most recent consultations, officials of the Transitional Federal Government and of Puntland and Galmadug expressed their preference for the location of any such court within Somalia, and confirmed their willingness to work towards agreement on a location for it.

Among the States of the region consulted as potential host States for an extraterritorial Somali court, the Government of Tanzania expressed its readiness to host the court within the current premises of the International Criminal Tribunal for Rwanda (ICTR) in Arusha. In such an event, the Government considered it imperative that prison construction in Somalia be completed on time to avoid those convicted being held in Tanzania for lengthy periods. The ICTR has confirmed that, as its work approaches completion, one courtroom, office space and cells for 30 piracy suspects could be made available. The office space and numbers of cells available will increase during 2012 and 2013. However, the ICTR also highlighted that its premises are within the Arusha International Conference Complex, which it shares with other international bodies. It also raised serious security concerns about hosting an extraterritorial Somali anti-piracy court within those premises.

The United Nations Department of Safety and Security shares that concern and advises that a full security risk assessment would be needed. They consider that hosting the anti-piracy court would significantly increase the security risks to the ICTR, and potentially to the United Nations more widely. The fact that the premises are shared limits the ability to upgrade security. DSS therefore recommends that stand-alone premises would need to be found.

The Government of the Seychelles considered that the proposal for an extraterritorial Somali anti-piracy court needed considerable further discussion and consultation before any substantive reply could be prepared for the Security Council.

The Government of Mauritius supported the idea of on extraterritorial Somali anti-piracy court, but was faced with a number of practical difficulties and capacity constraints that prevented it from hosting a court at this stage.

If the proposal for an extraterritorial Somali court were to proceed, a key modality would be the negotiation of an agreement between the Transitional Federal Government and the host State to regulate their respective rights and obligations. Drawing on the Lockerbie precedent, in which the United Kingdom and the Netherlands agreed in 1998 that a Scottish court could conduct a trial in the territory of the Netherlands, such agreement would be likely to require provisions to regulate the exercise of Somali jurisdiction within a specified location in the territory of the host State; the receipt and transfer of suspects through the territory of the host State; the security of premises and persons; privileges and immunities; cooperation between the two States; and the responsibility for costs.

It is difficult at this stage to estimate a timeline for the establishment of an extraterritorial court. Factors affecting the timeline would include, for example, the views of the concerned States and the need for the negotiation of an agreement between the Somali authorities and the host State for the establishment of the court. Some of the relevant factors are currently being addressed, such as the training of judges and other legal professionals, as well as the improvement of prison conditions in Somalia. We have also confirmed that legal experts from among the Somali diaspora would be contactable and may be available to mentor and assist Somali legal professionals.

Similarly, it is difficult to estimate the costs of the establishment and functioning of an extraterritorial court at this stage. The closest comparisons that we have may be the costs of the Special Panels in Timor-Leste, which were approximately $4 to $5 million dollars per year, and the Bosnia War Crimes Chamber, which costs about €13 million per year.

If, at the other end of the spectrum, there were to be participation in an extraterritorial court by United Nations-selected judges, prosecutors and staff, the closest comparison would be the Extraordinary Chambers in the Courts of Cambodia, which is a national Cambodian court with a United Nations component embedded within it. Its budget for the current biennium is $92.3 million.

I would like to underline the position that I set out at the beginning of my statement. If the Council wishes to mandate the Secretary-General to look in greater depth at any of the particular modalities considered in the report, or to request the Secretary-General actively to address any of the modalities with a view to moving towards the establishment of Somali specialized courts, including an extraterritorial Somali court, we will do so urgently.

This brings to an end my introductory remarks. I am looking forward to the debate and am happy to answer any questions.

The President (*spoke in French*): I now give the floor to members of the Council who wish to make statements.

Mr. Churkin (Russian Federation) (*spoke in Russian*): We are grateful to Ms. O'Brien for her briefing and for the thorough analysis contained in the report of the Secretary-General (S/2011/360) on the legal and practical aspects of the establishment of specialized anti-piracy courts in Somaliland and Puntland and an extraterritorial Somali court with international participation. The report provides sufficient basis for further movement forward towards the creation of an effective system for the judicial prosecution of pirates. It is important to carefully analyse the constitutional and legal framework for the establishment of new anti-piracy courts and their possible material and procedural bases, as well as questions relating to staffing and security.

We welcome in particular the readiness of Tanzania, as noted in the report, to host the extraterritorial court on its territory. The Security Council would thus have, in the leadership of that country, a responsible and reliable regional partner in the criminal prosecution of pirates.

However, we share the view of Tanzania that strengthening the extraterritorial court by adding an international component is a necessary condition for its effective functioning in accordance with international standards.

There are numerous problems noted in the report concerning the creation of a system of anti-piracy courts. We had expected that there would be many, but there are no more than there were when the Security

Council helped to create other judicial organs, and they can all be resolved with sufficient political will.

In that connection, we are concerned at the information contained in the report on the lack of consent from the Transitional Federal Government and regional Somali authorities with respect to the idea of two anti-piracy courts, in Somaliland and Puntland, and an extraterritorial court. We do not believe that such a position is rational. It is clear that neither Somalia nor other States that are in a more favourable position can deal alone with the problem of the judicial prosecution of pirates. Even international efforts to strengthen the capacity of the judicial systems of Somalia and other States in the region have proved insufficient, as is evident from the statistics contained in the report. Thousands of Somalis are involved in the piracy business, and, in spite of all the efforts made to strengthen the capacity of national judicial systems, only a few of them reach the court system.

If we look beyond narrow interests, it is clear that there is no choice other than to create two specialized courts, in Somaliland and Puntland, and an extraterritorial court with international participation. That is the absolute minimum.

The current situation involving piracy in general and the judicial prosecution of pirates in particular is far from being acceptable. It is necessary to continue to make clear to the Somali authorities the advantages of the option for the criminal prosecution of piracy, which is exclusively pro-Somali in essence. Together with the other members of the Security Council and the Secretariat, we will endeavour, in the near future, to work on eliminating existing obstacles to the creation of courts in Somaliland and Puntland and an anti-piracy court with international participation. We do not rule out the possibility of other options that do not stipulate the need to obtain consent from the Somali authorities. We will also look for ways to resolve other problems noted in the report.

We are convinced that any measures provided for in resolution 1976 (2011) to fight against piracy in the economic and security areas can be successful only if they are paired with steps aimed at the effective creation of a mechanism involving international participation for the judicial prosecution of pirates.

Mr. Moraes Cabral (Portugal): I wish to thank the Secretary-General for his comprehensive report (S/2011/360) and the Legal Counsel for her presentation.

The report, in its analytical approach, reflects the difficulty of the subject that we are addressing today. Piracy off the coast of Somalia is indeed a complex issue, as the Council has acknowledged, in particular in its resolution 1976 (2011), adopted in April. A solution to this problem requires responding to a variety of social, economic and security challenges. The report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, Mr. Jack Lang (S/2011/30, annex), was particularly eloquent in that regard.

One of the most important proposals to fight the piracy threat in the region was the establishment of an extraterritorial Somali court functioning in Arusha. The solution, long defended by my country, represents the most practical way of swiftly addressing the situation of impunity for piracy in the region through a Somali solution — a solution that is flexible enough to help attract international capacity support, capable of responding to needs on the ground as they evolve, and also able to be rapidly set up, since it could rely on existing facilities.

It was with this in mind that the Security Council requested the Secretary-General, in its resolution 1976 (2011), to report on the modalities for the establishment of specialized Somali courts to try suspected pirates, both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court consistent with applicable human rights law and with the participation of international personnel and other international support.

The thorough report presented by the Office of Legal Affairs deals with the many components of the solution and identifies exhaustively the difficulties and challenges ahead. We note in particular the complex political context, the security situation in Somalia and the need for stabilization in the country and, in particular, for political will for such a solution to be viable.

We encourage the Office of Legal Affairs to pursue its efforts in that regard, in particular in its contacts with the Transitional Federal Government in the months to come so as to determine, in cooperation with the Somali authorities, a feasible road map of activities conducive to the establishment of a Somali

judicial solution to piracy, including through the definition of the necessary legal framework.

We welcome also the positive response by the Government of Tanzania to the proposal to establish an extraterritorial Somali specialized anti-piracy court in Arusha. Such a solution, which builds on existing premises and capacity in the existing International Criminal Tribunal for Rwanda (ICTR) premises, seems to be a practical way forward. We note also the convergence of this aim with the downsizing and completion strategy of the ICTR, and the possibility of using available space in courtrooms and facilities in the near future, not losing sight, naturally, of the security needs to be safeguarded.

We thank the ICTR for its cooperation and positive approach and welcome further efforts in evaluating concrete needs to accommodate this solution. We commend also the active support of the United Nations Office on Drugs and Crime in training in the area of judiciary activities and in prompting the necessary debate over the future needs for such a solution.

To fight the scourge of piracy, we should concentrate our efforts on targeting those suspected of financing and planning acts of piracy. They are the most responsible for and the real masterminds of the majority of piracy incidents off the coast of Somalia and should therefore be the principal aim of our action.

As the report underlines, consultations with a number of Member States, INTERPOL, the United Nations Office on Drugs and Crime, the Department of Political Affairs and the Monitoring Group of the Security Council Committee established pursuant to resolution 751 (1992) suggest that the identities of key leaders of pirate networks and their location and political connections are widely known. Many of them are reportedly within Somalia. Therefore, any solution that is aimed at prosecuting such persons cannot be detached from the legal environment of where they actually live.

That is why a solution must be based on Somali law, even if initially through an extraterritorial court justified by the current security situation in Somalia and the need to ensure safe and swift investigation and prosecution. Such a solution would, indeed, allow for investigations to be conducted securely from the outside but under a legal framework that would facilitate the execution of the necessary procedural acts in Somalia, including arrest warrants.

Finding a solution to counter impunity for piracy has never been easy. Moreover, in the particular situation of the Somali conflict and the security environment in the country, the challenge is even more complex. But we remain convinced that any solution to piracy off the coast of Somalia can be found only inland. The capacities to be established now are to benefit this country, because only by supporting Somalia to overcome this challenge can the international community put an end to the scourge of piracy in the region.

We strongly support the Office of Legal Affairs and encourage it to pursue all necessary efforts with that goal in mind.

Mr. Hardeep Singh Puri (India): Let me begin by thanking the Under-Secretary-General for Legal Affairs, Patricia O'Brien, for briefing the Council on the report of the Secretary-General (S/2011/360) submitted pursuant to resolution 1976 (2011) on the modalities for the establishment of specialized Somali courts to try suspected pirates in Somalia and outside, including an extraterritorial Somali specialized anti-piracy court and the possible participation of international personnel and other international support and assistance.

The international community is facing an unprecedented and growing threat from piracy. The report of the Secretary-General (S/2011/360) presents a very alarming picture. Despite an increased naval presence in the Internationally Recommended Transit Corridor (IRTC), piracy attacks off the coast of Somalia have continued to increase, as have the geographical range of the attacks and the level of violence employed by pirates.

As of 14 June, 23 ships are being held by pirates, with a total of 477 hostages. The geographical area of the attacks now stretches to 2.8 million square miles, which is not easy for naval forces to patrol. The use of overwhelming force by pirates to overcome security personnel on board merchant ships and the use of hijacked crews as human shields are also matters of serious concern.

Piracy is not only a threat to the freedom of maritime navigation; it has destabilizing effects on global and regional trade and on security and is

jeopardizing the lives of seafarers, who are the lifeblood of the international economy.

To combat this menace, this Council has adopted a multilateral and multidimensional approach that as a first step led to the establishment of the Contact Group on Piracy off the Coast of Somalia, in January 2009, of which India is a founding member. Though naval ships deployed in the Gulf of Aden have successfully thwarted several piracy attempts and have provided security escorts to the merchant marine in those waters, the growing scope and expanding area covered by the problem indicate that naval operations alone may not be sufficient and that there is an urgent need to adopt a comprehensive counter-piracy strategy.

In that connection, I would like to mention the issue of seafarers, who are the lifeline of merchant shipping. India contributes around seven per cent of the world's merchant marine and thus has an abiding interest in their safety and security. So far, the main focus of our concerted efforts has been to protect the ships from pirate attacks and on issues related to prosecution and punishment of pirates. Keeping in view the increasing incidences of seafarers being taken as hostages and the intensity of the violence used against them, there is a need to pay special attention to the safety, security and well being of seafarers taken hostage and to their quick release by whatever means appropriate.

In addition to a naval solution, this Council is also focusing its attention on ways and means to effectively apprehend, prosecute and punish those who engage in piracy. Capacity-building, not only of Somalia but of other States in the region, is an essential component of such mechanisms. India has welcomed efforts to counter piracy by enhancing regional cooperation and capacity-building of States in the region. The international community needs to recognize that any effort to prosecute and imprison pirates cannot succeed without the effective involvement of the States in the region.

The issue of imprisonment of convicted persons can be best addressed by building prison infrastructures in the region, ideally in Somalia. It is also important to ensure that sustained and predictable financing is available to the host States to handle the financial burden of prosecuting and imprisoning convicts over periods of long duration.

Ensuring sound and prompt prosecution of piracy suspects and their imprisonment subsequent to trial is critical to prevent impunity and deter further attacks. We fully support strengthening the ongoing United Nations assistance programmes and extending them to regional States to build capacities for prosecution and imprisonment of pirates. United Nations assistance could focus on the three main components of legal reform: capacity-building for prosecution and trial of piracy cases, effective law enforcement, and improvement of prison infrastructure in Somalia and regional States.

We commend the efforts of the United Nations Office on Drugs and Crime (UNODC), which has contributed significantly to strengthening the law enforcement, prosecutorial and judicial capacities in Puntland and Somaliland. We are very encouraged by the number of piracy cases successfully prosecuted in Somalia, and we urge UNODC to continue its good efforts.

We also appreciate the efforts of the United Nations Development Programme in increasing prison capacity and improving safety and security in Somalia so that those held responsible for committing acts of piracy can undergo imprisonment in their own country. This would also help in the smooth rehabilitation of convicts once they are released after completing their sentences. Establishment of more such prisons would also enable the transfer of convicted persons from other countries to undergo the remainder of their sentence in Somalia.

We welcome the volunteering by States in the region to cooperate in the prosecution and punishment of suspected pirates. We support the establishment of any extraterritorial court outside Somalia in which Somalis have an ownership, the courts that are manned by Somali judges and prosecutors in accordance with Somali law. We are happy to note from the Secretary-General's report that the requisite expertise may be available in the Somali diaspora and that they are willing to contribute to the Somali cause.

Participation of an international component as judges and prosecutors in anti-piracy courts may not be a pragmatic and long-term solution to the problem. Anti-piracy courts cannot be equated with specialized international tribunals set up for dealing for cases of war crimes or crimes against humanity. Pirates belong to an ordinary class of criminal, and they should be

treated like any other criminal who commits similar offences on land.

Besides being cost-effective, the approach with Somali ownership will be relatively easier to implement, as it would utilize an existing jurisdiction with established crimes and procedures. The regional proximity would be useful for the purpose of the transfer of suspects by patrolling naval States and of those convicted to third States for imprisonment.

We fully support the finding in annex IV of the report that steps to disrupt land-based pirate activities and the associated financial flow are necessary in a multidimensional counter-piracy approach. Therefore, it is essential to investigate and prosecute individuals who provide the leadership and financial flows that sustain piracy. That would require broader criminal legislation to include crimes of extortion, kidnapping, conspiracy, money-laundering and financing of pirate activities.

Given the limited capacity of the Transitional Federal Government and other countries in the region, there is a strong need for capacity-building in this area too, with the active collaboration of UNODC.

In conclusion, we would like to emphasize that with the increased presence of international naval forces off the coast of Somalia and in the Gulf of Aden, pirates have moved to other areas. There has been an increase in piracy activities in the larger Indian Ocean area outside the IRTC. India has a strong and abiding interest in ensuring the security of maritime traffic off the Somali coast and in the Gulf of Aden. We stand ready to contribute to any international effort to increase effective cooperation among States to tackle the threat of piracy and armed robbery at sea and the safety and release of hostages taken by pirates.

Sir Mark Lyall Grant (United Kingdom): I thank the Secretary-General for his report (S/2011/360) and Patricia O'Brien for her comprehensive briefing this morning. I also commend Mr. Jack Lang, Special Adviser to the Secretary-General, for his work on this issue, which led to the adoption of resolution 1976 (2011).

The United Kingdom remains strongly committed to the fight against piracy across the spectrum of necessary activity to address piracy directly and to tackle the roots of piracy on land. We continue to provide military assets in support of the European Union, NATO and the Combined Maritime Forces counter-piracy naval operations, and we provide capacity development support to regional partners, including direct support to the Coast Guard of the Seychelles.

The United Kingdom is supporting work to target pirate leaders and disrupt the financial flows linked to piracy. The United Kingdom is also taking forward work to identify how development work can most effectively be targeted to undermine piracy.

As a key part of this commitment to a comprehensive approach to counter-piracy, the United Kingdom strongly supports efforts to deliver viable legal solutions. In the past year the United Kingdom has provided $8 million of support for the work of the United Nations Office on Drugs and Crime in building the capacity of local courts and prisons in the region, in line with the Special Adviser's recommendations.

In our view, there must be particular emphasis on efforts to build prison capacity, which remains the critical capacity issue, much more so than court capacity. It is of note that there is a greater willingness among regional partners to prosecute suspected pirates than there is to hold those convicted, and that the Somali administrations are willing to accept post-trial transfers from courts in the Seychelles, and in principle from others too, once similar agreements are reached. The United Kingdom welcomes the stated intention of the authorities in Somalia to work with the United Nations on specialized anti-piracy courts within Somalia and on prisons within Somalia to provide more capacity in both areas as soon as possible.

As Patricia O'Brien has highlighted this morning, the report sets out the clear view of the Transitional Federal Government of Somalia and the regional administrations of Somalia that they do not support the establishment of a specialized Somali anti-piracy court outside of Somalia. We believe that it would be wrong to disregard their views.

In addition, the report sets out the challenges and difficulties that would be faced in setting up such an extraterritorial court. It seems clear that it would not be workable in the near future for legal and other reasons, nor would it be cost-effective when compared to the costs of prosecution in national courts in the region or elsewhere. The United Kingdom believes that such a proposal should therefore now be put aside and efforts

and money focused instead on supporting national courts and prison capacity.

Regarding the specific proposal to base an extraterritorial court in Arusha, the United Kingdom believes that a single extraterritorial court in Arusha would be unable to handle the problem. Both the judicial and detention requirements would be more than Arusha can provide, particularly while the Rwanda Tribunal continues its work.

The United Kingdom is willing to consider prosecuting pirates in its national courts on a case-by-case basis, especially where our nationals have been affected, and we encourage all flag States and international partners to show similar willingness. We pay tribute to partners who have taken forward such prosecutions already and express particular gratitude to the Governments of Kenya, the Seychelles and Somalia for their leadership role in the region, as well as to the Governments of India and the United States for their repeated willingness to take determined steps to ensure prosecution of the pirates captured by their military forces.

Mrs. Ogwu (Nigeria): I also want to thank Under-Secretary-General O'Brien for her insightful and comprehensive briefing on the Secretary-General's report (S/2011/360).

The Secretary-General's report does not just paint a vivid picture of the challenges in the fight against piracy off the coast of Somalia. It also profiles a range of options to address the threat with a renewed sense of urgency. Nigeria shares this sense of urgency, including with regard to the need for swift action, considering the devastating impact of piracy on Somalia, the Horn of Africa and especially international trade. We share the Special Adviser's basic premise that convergent comprehensive measures are required to co-opt the menace, in particular the establishment of a legal regime to prosecute piracy cases. We believe that such a regime should be anchored in internationally supported, Somali-led objectives and national ownership.

Nigeria supports the measures the Secretary-General has outlined in the report to engender global cooperation in the fight against piracy. We believe that overcoming the jurisdictional, legislative and constitutional challenges to multinational prosecution of piracy cases requires international cooperation. Mindful of the significant investment required, we welcome the Special Adviser's estimated timeline of two to three years for developing the requisite national and regional legal regime and infrastructure to combat piracy. The depth of talent and ability within the Somali diaspora should be explored to augment local capacity and build a robust extraterritorial legal system.

Nigeria views broad-based regional criminalization of piracy and the establishment of specialized piracy courts within Somalia and the region as imperative in the fight against piracy. To foster regional cooperation, we support enhanced coordination and information-sharing among the private sector, law enforcement agencies and relevant international and regional organizations. Indeed, we support the strengthening of anti-money-laundering capabilities in the region.

As significant as these counter-piracy measures are, they will require a determined, cohesive government to steer their implementation. With the Al-Shabaab-driven insurgency and the incessant wrangling plaguing the leadership of the Transitional Federal Institutions, piracy has not yet received the desired robust response from the Transitional Federal Government (TFG). Stabilizing Somalia's political environment is therefore a prerequisite to a comprehensive and enduring counter-piracy action.

As expressed in resolution 1976 (2011), Somali authorities should assume the responsibility of creating clear political and economic alternatives to piracy. Reviving Somalia's domestic industry is in consonance with the Special Adviser's suggested cluster of measures for preventing piracy. The TFG institutions should now begin the process of building consensus on national goals around the Kampala accord, following the resignation of Prime Minister Mohamed. We encourage parliament to revise Somalia's law to provide a sound criminal and procedural basis for prosecutions. States in the region should also take similar actions under their domestic laws, in accordance with resolution 1918 (2010).

Considering the negative effects of illegal fishing and maritime pollution, Nigeria remains unwavering in its support of the Special Adviser's recommendation on the establishment of an independent committee to investigate allegations of illegal fishing and dumping of toxic waste in Somali waters. We also renew our call for generous contributions to the trust fund for this purpose.

With regard to the appropriate reach of an extraterritorial court, our view is that it is primarily a jurisdictional issue. Nigeria has always viewed piracy as a crime of international jurisdiction. Therefore, pirates may be prosecuted by any regional court of sufficient competence within Somalia and the region. However, given the necessary challenges to managing a regional court, we believe that such a forum should be reserved for high-profile cases of regional significance.

Mrs. Dunlop (Brazil): We thank Under-Secretary-General Patricia O'Brien for her very informative briefing.

Piracy is a serious scourge affecting the situation in Somalia. It has further aggravated the grave crisis in the country. The consequences of piracy extend far beyond Somalia's borders and threaten the stability of the entire region. Its material burden has reached alarming levels and has been surpassed only by the tragic human costs to those who face the horrors of kidnapping and death.

The comprehensive report of Special Adviser Jack Lang (S/2011/30, annex) was a welcome contribution to the considerations of the international community on the issues. We welcome the fact that resolution 1976 (2011) incorporated many of the recommendations of that report. The report of the Secretary-General (S/2011/360) being discussed today addresses an important component of that effort as it elaborates on the modalities for the creation of specialized Somali anti-piracy courts.

Brazil gives particular attention to the issue of capacity-building for training in the provision of adequate facilities for the tasks involved in the prosecutorial process. We also encourage Somali authorities to give due attention to the need for revision in its legislation on piracy, and to establish the necessary laws for efficient criminal and procedural foundations for prosecutions. Regarding the issue of extraterritorial Somali courts, the opinion of Somali authorities must be the guide to any action by the international community.

As we continue to deliberate on better ways to combat piracy, it will be necessary to maintain efforts towards the improvement of prosecution mechanisms, while at the same time focusing on the deeper issue of the underlying causes of piracy. We fully concur with the assertion of Mr. Lang's report that it is necessary to create socio-economic opportunities that can curtail the recruitment of pirates and to encourage alternatives that contribute constructively to the situation in Somalia. As Brazil has previously stated, a comprehensive strategy is required so as to combine repressive and punitive measures with preventive ones through initiatives on land that can help mitigate the problems at sea.

Mr. Dunn (United States of America): We join our colleagues in thanking Under-Secretary-General O'Brien for her thorough briefing this morning. The United States fully agrees with Under-Secretary-General O'Brien and Special Adviser Jack Lang that to address piracy effectively solutions must be found both on land and at sea, and that there must be judicial consequences for those involved. In that regard, I would like to thank the United Nations Office of Legal Affairs (OLA) for rapidly compiling this informative report (S/2011/360), which discusses the feasibility of specialized Somali counter-piracy courts both in and outside Somalia, as well as valuable information on ongoing enhanced prosecutorial efforts in other States of the region.

The Secretary-General's report emphasizes the ongoing work of the United Nations Office on Drugs and Crime (UNODC) and of the United Nations Development Programme towards establishing courts in Puntland and Somaliland within the existing authorities. We commend and support that important work. With United Nations assistance, trials in Somaliland and Puntland are expected to reach international standards, thus permitting the transfer of suspects to Somalia for prosecution within three years. Prison capacity, significantly enhanced also to international standards, is expected in two years.

We believe that building on the ongoing efforts in Somalia along those lines may be the most effective and efficient way to help meet the goal of the Lang report (S/2011/30, annex) for the Somalialization of the anti-piracy effort. Based on the report's findings, it is clear to us that an extraterritorial Somali piracy court is not a viable option due to opposition to the idea from Somalia itself and the host of constitutional, procedural, security, financial and logistical issues identified in the report. The Somali authorities have been clear that they do not support that idea, as confirmed in the OLA report. In addition, the report makes clear that major amendments to the Somali Constitution, even to the Transitional Federal Charter,

would be required to provide a basic legal foundation for an extraterritorial court. We believe that such changes are not realistic, especially given the lack of support from Somalia for such an objective among the many competing priorities.

While long-term efforts to improve the judicial and prison capacities in Somalia are under way, we must address the urgent need to establish a reliable venue in the region for the prosecution of suspected pirates captured by international naval forces. The United States supports the establishment of a dedicated piracy chamber or court in one or more States of the region, applying the national law of the State in which it sits. If the law of the host State allows, that dedicated court or chamber can be supplemented with international personnel, including foreign prosecutors and judges. With adequate international support, it could be established almost immediately in one of several States in the region that already has robust piracy law in place.

In terms of the next steps, the Seychelles has offered to host a regional prosecution centre, given sufficient prison capacity to imprison convicted pirates. We also welcome the confirmation in the OLA report that Tanzania is willing to host a dedicated piracy court on its territory. The international community should consult with any other State of the region discussed in the report, or that otherwise might come forward, to develop a plan to establish in the very near term a dedicated piracy court or chamber in the region.

As recognized in the Lang report, we must not forget that incarceration is perhaps the most significant constraint on piracy prosecutions. In that regard, the United States urges Puntland and Somaliland to pass any necessary prisoner transfer legislation. We agree that if the international community will invest in the construction and rehabilitation of prisons in those regions, convicted Somali pirates could be housed humanely and securely in such facilities.

Finally, the United States is committed to pursuing the means to disrupt the pirate enterprise ashore, including by tracking illicit financial flows, in an effort to identify and prosecute the organizers and financiers of piracy. To that end, we energetically support the leadership of Italy, South Korea, INTERPOL, UNODC and other partners in that regard.

In conclusion, in cooperation with the international community, the United States plans to continue to address actively the issue of piracy as we seek to assist Somalis in bringing stability to their country. The roots of the piracy problem remain on land. In that regard, the United States will continue to support the Djibouti peace process, the Transitional Federal Government and the African Union Mission in Somalia to work towards greater stability, governance and economic viability throughout Somalia.

Mr. Araud (France) (*spoke in French*): Nearly five months ago, the Security Council met to listen to the report of the Special Adviser of the Secretary-General on Piracy, Mr. Jack Lang (see S/PV.6473). The overall feeling then was one of urgency. More recently still, in a message of 18 April, the Secretary-General underscored that piracy was rapidly growing and that the scale of the phenomenon seemed to be overtaking the efforts being implemented by the international community to overcome it.

I will make two comments today. First of all, the diagnosis has not changed. By adopting resolution 1918 (2010), the Council noted that the absence of legal solutions encouraged the pirates' impunity and only increased the scourge of piracy. Since then, that situation has only deteriorated.

The report before us (S/2011/360) notes that attacks off the Somali coast, their geographical range and the level of violence used have continued to increase. Since 1 January, there have been 171 attacks, of which 18 were successful. In May, pirates detained 26 boats and 601 hostages. Crews that are taken hostage are used as human shields. Recently, a Filipino sailor was executed. Four American citizens have been killed. According to estimates, there are about 500 pirate leaders, 300 group leaders and 250 carrying out the attacks. That being the case, 9 of 10 pirates are released owing to the lack of capacity of judicial and prison systems.

France once again thanks the States of the region for their efforts — Kenya, where the prosecution of 69 people is still ongoing; the Seychelles, which has 23 on trial; and Tanzania, which is prosecuting six. Their contributions must be acknowledged. However, it would be unfair to think that those countries could cope with the scale of the phenomenon. A new solution is necessary. We must show pragmatism.

My second comment is that we know the solution, and it is a Somali solution. In entrusting the drafting of the report to Jack Lang, the Secretary-

General was proposing to the Security Council a formula that could provide a rapid and effective solution. Two months ago, the Council decided to urgently study the possibility of creating specialized Somali jurisdictions, including an extra-territorial Somali specialized court. The Council also requested a strengthening of the incarceration capacity in Somalia and a report by the Secretary-General on modalities for these initiatives, with a view to taking new decisions.

What does the report tell us? First of all, that the legislative, penal and procedural framework in Somalia for fighting piracy is incoherent and out of date. Duly noted, but we must be proactive and try to adapt that framework.

With respect to the issue of jurisdiction in Somalia, the assistance of the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) will enable Puntland and Somaliland to try only "around 20 additional cases each per year" (S/2011/360, paragraph 10), but not for three more years. That is why we must set up specialized jurisdictions and not simply use what we have. Here also, the work has just begun.

Finally, with respect to incarceration, UNODC has the funds to build two new prisons, one in Somaliland and one in Puntland, with the capacity to hold 1,000 inmates, which, it is proposed, would be reserved for pirates convicted outside of Somalia. How can we deprive Somalia of the right to prosecute its own nationals? In addition, the two-year delay is too long. We therefore need to look, together with UNODC, at ways of shortening that time period.

It is not a time to be discouraged, but a time to take action. In reading the report of the Secretary-General, I sometimes feel that the Secretariat is overwhelmed by the magnitude of the undertaking. This we understand, and we sympathize, but opportunities do exist. The report notes that there is a pool of international experts in the Somali diaspora who would be ready to participate in specialized jurisdictions, whether inside or outside Somalia.

Creating an off-site Somali court, an idea that was supported by most of the speakers preceding me, would, of course, be feasible. We know, for example, where the court could be set up temporarily. Tanzania, whose commitment to this matter I welcome, expressed its readiness to host such a chamber in Arusha, on the site of the current International Criminal Tribunal for Rwanda (ICTR). The use of infrastructure from the Residual Mechanism of the ICTR to deal with piracy at the judicial level would be negligible in terms of cost.

Also, more generally, establishing an off-site Somali court would be an easy solution. The court's functioning would require an estimated $7.5 million over three years, or hardly more than $2.5 million per year. Above all, this cost is negligible in comparison with the overall global cost of piracy. If we add up the economic costs of this scourge and the cost of related military operations, piracy every year costs us between $7 billion and $12 billion.

The report notes the division among the Somali authorities. It is up to the members of the international community to make clear their expectations to the Somali authorities. We expect the Transitional Federal Government to shoulder its responsibilities in dealing with this threat, which the Council has called a threat to international peace and security. The proposed solution offers an opportunity to develop Somali judicial capacities with the assistance of the international community.

Among the important questions raised by the report concerning extraterritorial Somali jurisdiction, I would highlight that of the scope of jurisdiction. Should such a court investigate and prosecute those who finance and plan acts of piracy, or prosecute only those who carry them out? That is a good question. It is clear that preparing comprehensive files on those primarily responsible for such crimes would require international expertise — more so than in other cases. Could we consider a precursor group in Tanzania to deal with such questions? Such prospects must be investigated quickly and in a lasting manner in order to effectively strengthen Somali capacities.

We must be creative and imaginative. It is clear that obstacles remain, and my delegation is the first to recognize them. But if we talk only about obstacles, we will not accomplish anything.

Over a year after the adoption of resolution 1918 (2010), it is time to act. We owe it to the sailors and users of the sea, who are on the front lines of the battle. The Secretary-General stated recently — and France shares his view — that their security and well-being should be our primary concern. We are ready to work with the members of the Council and with the

Secretariat to move forward in a concrete and speedy manner.

Mr. Salam (Lebanon): At the outset, allow me to thank the Under-Secretary-General, Ms. O'Brien, for her valuable briefing.

My delegation would like to emphasize the importance of resolution 1976 (2011), which demonstrates the resolve of the Council to assume a more forward-looking policy aimed at establishing mechanisms to prosecute piracy and armed robbery off the coast of Somalia, on the basis of the recommendations set out in the report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, Mr. Jack Lang (S/2011/30, annex). The resolution further reflects the need to adopt a holistic approach towards combating piracy, which constitutes a threat to, inter alia, human life, development, international navigation and trade.

The failure to prosecute suspects and incarcerate those responsible for piracy and armed robbery severely undermines anti-piracy efforts. The deteriorating situation, as described in the Special Adviser's report, particularly given the increasing number of piracy attempts off the coast of Somalia and the enduring catch-and-release practice, requires a strong response from the Council. This is necessary in order to enable interested parties to set up prosecution mechanisms before reaching what Mr. Lang has referred to as a point of no return in the fight against this serious offence.

We take note of the Secretary-General's report (S/2011/360) and would like to highlight the following points.

First, we stress once again the importance of the incorporation of international law applicable to combating piracy and armed robbery into the domestic law of the States of the region. We take note of the progress described in the report in this respect and look forward to enhanced assistance to the relevant authorities with a view to enabling them to adopt anti-piracy laws.

Secondly, my delegation welcomes the participation of regional States in the prosecution and trial of suspected pirates and the enforcement of sentences and would like to commend those who have expressed readiness to host potential extraterritorial Somali courts within their respective jurisdictions. This does not do away, however, with the need to continue to give priority to supporting, strengthening and modernizing Somali courts on Somali lands.

We are also fully cognizant of the concerns of regional States with regard to security, logistics, international cooperation and funding. Assistance from the United Nations and donor countries in this respect would be crucial for the efficient and sound implementation of any decision to establish an extraterritorial Somali court in any neighbouring State that has expressed its willingness to host such a body.

Thirdly, more avenues should be explored in order to secure the jurisdictional basis under Somali law and the laws of any host State, namely the legal reforms necessary to authorize the required executive and judicial jurisdiction over suspected pirates. We encourage the United Nations to assist Somalia and potential host States in clarifying the pending jurisdictional matters described in the report. The United Nations has an additional advantage in this regard, as it can draw lessons from its rich experience in the various models of international education it has set up or assisted States in so doing.

Fourthly, we look forward to further dialogue between the Transitional Federal Government, as well as the transitional federal institutions, and the United Nations, so that an agreement can be reached as to the most appropriate arrangements and their modalities in order to bring offenders to justice.

The aim of this meeting is to specifically address the mechanisms for the prosecution of piracy. However, we must think of judicial mechanisms as one tool that should complement others that ensure economic and social development.

We would also like to recall here that resolution 1976 (2011) importantly highlights the need to investigate the threats to the health and livelihoods of Somalis related to illegal fishing and the dumping of toxic substances off the country's coast.

The international community needs to remain one stop ahead of the pirates. For that reason, we look forward to the Council's full engagement with the affected countries and the relevant United Nations agencies in order to keep up the momentum in our collective counter-piracy efforts.

Mr. Berger (Germany): I thank the Legal Counsel for her detailed briefing on the modalities for the establishment of specialized Somali anti-piracy courts. We also commend the report of the Secretary-General (S/2011/360) for its detailed analysis of the legal, administrative and financial implications.

Despite some progress in recent months, Germany is very concerned about the persistent threat of piracy and armed robbery off Somalia and in the region. The Security Council clearly needs to continue to address this threat to peace and security. The Council has taken up this task by unanimously adopting resolution 1976 (2011). The Security Council and the international community have shown unity and resolve, but we have to step up our efforts.

The report of the Secretary-General identifies a number of challenges with regard to the establishment of specialized Somali anti-piracy courts and the setting up of an extraterritorial Somali court in a third country in the region. We hold the view that it must ultimately be in Somalia that pirates are prosecuted and imprisoned. The urgent establishment of adequate structures in Somalia is crucial to reaching that goal.

We therefore share the aim of assisting the Somali justice system to prosecute piracy suspects in accordance with international standards, in particular fair trial and due process guarantees, and to imprison those convicted in accordance with international human rights standards, thereby enabling States to transfer piracy suspects to Somalia.

To that end, we would like to encourage all countries to continue their efforts and commitments in that regard. We appreciate the efforts of neighbouring States of Somalia and States in the region, such as Kenya and the Seychelles, to contribute to the efforts to prosecute piracy suspects. We believe these efforts need to be further enhanced until the Somali justice system is able to prosecute piracy suspects.

The activities of the Contact Group on Piracy off Somalia and its Trust Fund are important and very useful components of these combined efforts. We support these efforts and invite others, including the shipping industry, to further participate and commit funds in order to build support for courts and prisons in Somalia that are up to acceptable international standards.

Let me also mention the recent signing of a memorandum of understanding between the Seychelles, the Transitional Federal Government, Somaliland and Puntland concerning the transfer of convicted persons from the Seychelles to prisons in Somalia. This is the first arrangement entered into by Somali authorities in that regard.

The Secretary-General's report describes challenges with regard to the establishment of an extraterritorial Somali specialized anti-piracy court in a third State in the region. We take note of these challenges. The numerous uncertainties show that this option needs further and thorough exploration. However, we should continue to follow up on the Secretary-General's report in this respect and try to find solutions to the challenges he presented.

With regard to the financial implications of the eventual establishment of such an extraterritorial court, we take note of the report's finding that it would not be possible at this stage to comment authoritatively on costs figures. We would nevertheless like to underline that any such solution would have to be found within reasonable financial limits.

Let me conclude by underlining that we look forward to constructively continuing cooperation with partners in the Security Council and the Contact Group.

Mr. Wang Min (China) (*spoke in Chinese*): I wish to start by thanking Ms. Patricia O'Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, for her briefing. We have noted that there has indeed been some positive progress on bringing Somali pirates to justice, as evidenced by the increased number of prosecutions and of countries pursuing prosecutions, which we welcome. At the same time, we also note that the peace process in Somalia still faces many challenges and that piracy is still rampant, which is a cause for concern. I wish to make the following points with regard to the fight against piracy off the coast of Somalia.

First, detaining and prosecuting Somali pirates and ending impunity are crucial steps in our fight against piracy off the Somali coast. We support the continued focus on this issue by the international community and we believe that the report of the Secretary-General (S/2011/360) lays a good foundation for future work in this area.

Secondly, we appreciate the willingness of Tanzania to host an extraterritorial specialized court. We have also noted that there are multiple challenges in establishing anti-piracy courts, both within and beyond Somalia. We call on the international community to step up its efforts and address problems gradually, on the basis of respect for the will of the Somali people, to reach a viable and effective solution to this problem.

Thirdly, strengthening the judicial capacity of Somalia and other countries in the region goes hand in hand with establishing anti-piracy courts both within and beyond Somalia. The United Nations Development Programme and the United Nations Office on Drugs and Crime have both done a great deal of work in that regard, for which we express our appreciation. We call on the international community to continue to provide assistance to Somalia and other countries in the region.

Fourthly, the root causes of piracy off the coast of Somalia lie on land. As such, our response should tackle both the symptoms and the root causes, with the overall objective of achieving peace and stability and promoting economic and social development in that country. To that end, the Transitional Federal Government and the international community should pursue a comprehensive strategy in promoting balanced interventions on all fronts.

Mr. Mashabane (South Africa): We would like to thank Under-Secretary-General Patricia O'Brien for her comprehensive briefing on the modalities for the establishment of specialized Somali anti-piracy courts.

South Africa remains concerned about the continuing incidence of piracy off the coast of Somalia. To that end, we encourage States to take action individually and collectively to punish acts of piracy in conformity with the United Nations Convention on the Law of the Sea.

South Africa wishes to reiterate its view that the threat of piracy off the coast of Somalia is but a symptom of the internal political problems of instability and conflict in that sister African country. The threat of piracy can therefore only be resolved through a comprehensive approach that seeks to bring peace, stability and economic development to Somalia, including through the provision of adequate resources through the African Union Mission in Somalia. South Africa is firm in its view that piracy has to be defeated on land by comprehensively addressing all the social-economic, political and security challenges the people of Somalia face.

The reports of continuing illegal and unreported fishing in the waters off Somalia remain a major concern for us.

In addition, South Africa fully supports efforts to promote the rule of law and to fight the incidence of piracy off the coast of Somalia through the use of specialized anti-piracy courts, including extraterritorial courts. In our view, the establishment of a judicial mechanism such as this should satisfy two important requirements. First, it must be fully compatible with the constitutional and legislative framework of Somalia. Secondly, it must take into consideration the views of the Somali authorities in the regions where the courts are established.

My delegation thanks the Secretary-General for his comprehensive report (S/2011/360) on the modalities for the establishment of specialized Somali anti-piracy courts. We welcome the clarity that the report provides for assessing the recommendations contained in the report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia (see S/2011/30, annex), Mr. Jack Lang, on the establishment of the specialized Somali courts to try suspected pirates in Somalia and the region alike.

It is evident from the report that the establishment of such courts inside Somalia or in the region will require considerable financial resources and the building the necessary judicial capacity, establishing additional imprisonment infrastructure, addressing security concerns and creating the necessary constitutional and legal framework for facilitating the work of such specialized courts. What needs to be borne in mind is that the special courts are to be national courts. Therefore, there should be no disparities between piracy courts, jails in other courts or jails for other crimes in terms of the facilities to be established.

From the report, we observe the following major challenges outlined in establishing specialized Somali courts in Somalia. The first is the lack of adequate criminal and procedural legislation to provide a sound basis for piracy prosecutions in Somalia. Secondly, neither the Transitional Federal Government (TFG) nor the regions favour the participation of foreign nationals in proceedings in judicial or prosecutorial posts.

Thirdly, the views expressed by the United Nations Political Office for Somalia indicate that the current political climate in the country may make it difficult to pass the requisite legislation and amendments to the Transitional Federal Charter.

Under those circumstances, my delegation believes that is it important to take into consideration the views of the TFG and the regions in establishing such specialized courts. My delegation therefore welcomes the assistance and capacity-building provided by the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) to the TFG and regional authorities in Somalia in strengthening their national institutions in their anti-piracy efforts and in meeting international standards.

We further welcome the ongoing training of judicial officers and the construction and re-establishment of court and prison facilities in Somaliland and Puntland. That is particularly important given the express view of the Somalis that they do not wish foreign nationals to participate in judicial proceedings or prosecutorial posts. According to the report, the Somali authorities have expressed their support for the ongoing work of UNDP and UNODC in strengthening existing court structures in Somaliland and Puntland. The Security Council must consider those views in its deliberations on any future action.

Concerning the establishment of an extraterritorial Somali specialized anti-piracy court in another State in the region, we note the opposition of the TFG and regional authorities to the establishment of such courts. We should consider the development of a sustainable mechanism for resourcing national jurisdictions that have demonstrated willingness to arrest and prosecute pirates so as to enable them to pursue their efforts to put an end to impunity for piracy. This practice of catch-and-release has ensured the exponential growth of piracy, and it must stop.

We continue to encourage States to criminalize piracy in their national jurisdictions. In that regard, we urge flag States to prosecute piracy.

Mr. Osorio (Colombia) (*spoke in Spanish*): I should like to thank Ms. Patricia O'Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, for her serious and detailed presentation on the report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (S/2011/360) to try suspected pirates both in Somalia and in the region.

The situation has remained unchanged since our most recent meeting on Somalia (see S/PV.6532). Piracy attacks have continued to increase, as have the geographical range of the attacks and the level of violence and force used. Many hostages remain in captivity.

My delegation was a sponsor of resolution 1976 (2011) because it set forth the essential measures for moving forward with the fight against the crime of piracy over the medium term, with the prospect of contributing to national capacity-building in Somalia so as to enable its authorities to meet their obligations and needs over the long term.

Today, we remain convinced of the need to support and bolster State institutions, while recognizing its primary role in re-establishing security, political stability and the rule of law and relaunching its economic development as the bases for lasting peace and stability. In his report, the Secretary-General indicates that some of the assistance provided by the Organization, in particular the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC), has led to progress towards the achievement of the goals established in resolutions 1950 (2010) and 1976 (2011).

It is encouraging that steps have been taken to build capacity in the assize sections of regional and appeal courts in Somaliland and Puntland so as to enable them to prosecute cases of piracy and other serious crimes in accordance with international standards. Also promising is the progress made in building new prison facilities and renovating existing ones. Nevertheless, the Secretary-General warns of rising crime and the high level of impunity and highlights the need to secure resources for the adequate functioning of regional and federal courts.

Clearly, the specialized offices of the Organization must continue providing assistance to update and adapt the legislative basis at the regional and federal level in order to categorize piracy as a serious crime and draft a code of criminal procedure that meets international standards of due process.

With regard to the assigning of jurisdictions, we believe that the goal should be to establish courts with extensive jurisdiction that can be exercised in ordinary cases of piracy and in prosecuting financiers and facilitators of piracy. Although the latter cases are more complex and require more specialized courts and more time in which to become fully operational, they can have a greater impact on efforts to prevent and eliminate the crime of piracy. Priority must be given to the training of judges, lawyers and other related professionals. They must be provided the necessary time to develop capacity to effectively conduct investigations and trials in accordance with national and international needs.

With regard to the proposal to establish an extraterritorial Somali specialized anti-piracy court, it has been underscored that the Transitional Federal Government and regional authorities consulted are opposed to the establishment of such a court, owing to their concern about the potential diversion of funds and resources needed for capacity-building resources. My delegation believes that any decision on the establishment of a specialized court should have the support of the Transitional Federal Government. In addition, efforts should be made to ensure that professionals trained in Somalia are not encouraged to migrate. In any case, consideration should be given to the cost-benefit ratio of a specialized anti-piracy court and its implications for the security of the host State and community.

The Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia needs to have a guaranteed resource flow, including for the building and renovation of prisons that meet international standards in Somaliland and Puntland and for the resumed operations of regional courts.

Bearing in mind the timelines and the difficulties, as detailed by the Secretary-General, in effectively implementing resolution 1976 (2011), it is essential to stress the importance of using, in an effective and timely manner, the regime established in resolutions 751 (1992) and 1907 (2009) to impose sanctions on the relatively smaller number of individuals identified and located by the Monitoring Committee of Committee established pursuant to resolution 751 (1992) as leaders of private militias and piracy networks. That could be a strategic and effective way of supplementing the prosecution efforts under way.

Mr. Barbalić (Bosnia and Herzegovina): Allow me to express our gratitude to Ms. Patricia O'Brien for presenting the report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (S/2011/360), which we consider a good basis for creating instruments to counter piracy activities off the coast of Somalia.

Bosnia and Herzegovina remains deeply concerned over piracy off the coast of Somalia. It poses a threat to international peace and security as well as to international navigation and the safety of commercial maritime routes. The capacity-building measures for Somali State institutions, in addition to reinforcing sovereignty, should have a significant positive impact on the fight against piracy.

The international community and Somalia should continue to work in a coordinated manner in order to strengthen the Somali security sector. We welcome the ongoing activities of the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and the United Nations Political Office for Somalia in that regard. We also encourage the international donor community to provide the necessary assistance for counter-piracy efforts.

Bosnia and Herzegovina welcomes the Secretary-General's comprehensive report on the modalities for establishing specialized Somali anti-piracy courts, either in Somalia or on the territory of another State in the region. The basic parameters for introducing such specialized courts, or new sections within existing courts, should be strengthening the rule of law in Somalia and creating a long-term solution for counter-piracy activities.

We note with interest the imprisonment of convicted pirates and the trials that have been conducted by Somali courts, particularly in Puntland and Somaliland, as well as by other States in the region. Prosecuting financiers, facilitators, leaders and planners of piracy is crucial to addressing this issue.

Establishing specialized anti-piracy courts, either in Somalia or on the territory of another State in the region, would require that the Transitional Federal Institutions adopt the necessary constitutional and legislative bases, including considering the compatibility of both options with the relevant provisions of the 1960 Constitution of the Somali

Republic and the 2004 Transitional Federal Charter for the Somali Republic.

We are concerned about the fact that the criminal and procedural codes across Somalia are critically out of date, containing numerous inconsistencies and deficiencies. We therefore encourage UNDP and UNODC to continue their assistance in the preparation of necessary legislation for processing pirates, but we have to bear in mind that such a process is possible only with national ownership. To that end, we encourage the Transitional Federal Institutions to speed up the process of drafting and adopting a constitution.

Whichever option for establishing specialized anti-piracy courts is found most suitable, we have to consider the shortage of adequate courtrooms, correction facilities and other necessary infrastructure, both in Somalia and on the territory of other States in the region. In both cases, the specialized anti-piracy courts or new sections within existing courts would be part of the Somali judicial system. Due to the limited number of qualified legal professionals in Somalia, the training of judges, prosecutors, defence lawyers and other professionals should be maintained and, if possible, accelerated. We welcome the activities of UNDP and UNODC in that regard.

Modalities of international expertise and participation in the work of the anti-piracy courts, or new sections within existing courts, should be arranged in close consultation with the Somali authorities. We welcome the recommendation of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia that international expertise be drawn from the Somali diaspora. We take note of the statement of the Somali authorities, as well as those of other regional States, particularly Tanzania, regarding possible establishment of an extra-territorial Somali court.

We also commend the efforts of Operation Atalanta of the European Union Naval Force Somalia, the North Atlantic Treaty Organization, the Coalition Maritime Forces and States acting in their national capacities in cooperation with the Transitional Federal Government, other States in the region and one another to suppress piracy and protect vessels transiting through the waters off the coast of Somalia. We also commend the African Union and the troops of the African Union Mission in Somalia for their important role and hard work in stabilizing the situation in Somalia. Finally, we welcome the efforts and hard work of the Contact Group for Piracy off the Coast of Somalia, with its four supporting working groups, as an effective international cooperation mechanism in combating piracy.

The President (*spoke in French*): I will now make a statement in my capacity as representative of Gabon.

I would like to thank Under-Secretary-General Patricia O'Brien for her briefing and to express our appreciation of the Secretary-General's report (S/2011/360) on the modalities for the implementation of resolution 1976 (2011). We again acknowledge the efforts of Mr. Jack Lang, the Secretary-General's Special Adviser on piracy.

Piracy is a critical aspect of the overall problem of Somalia, in view of the large number of acts of piracy and their increasing violence.

We would like to speak to two points. We stress the importance of strengthening the judiciary and prison capacity in Somalia, especially in Puntland and Somaliland. In this regard, we are pleased with the progress made in training justice auxiliaries and police officers and officials, as well as the rehabilitation and construction under way of courts and prisons. We welcome the efforts of the United Nations Office on Drugs and Crime, as well as the support provided by the United Nations Development Programme and the efforts of the African Union Mission in Somalia in the fight against piracy on the ground.

Despite this progress, and while waiting for agreement on the ideal formula, the Somali authorities should continue to work on reviewing domestic law in order to enable their courts to prosecute and sentence those responsible for acts of piracy. It is important that current Somali legislation be brought closer to international standards for the fight against piracy. We call on the authorities to take part in that process. Close legal cooperation and information-sharing between the States in the region should be strengthened.

As the Secretary-General's report emphasizes, the Somali diaspora can contribute to the establishment of the processes and mechanisms to be set up. The international community must continue to support judicial and prison capacity-building in Somalia. Regarding setting up a specialized extraterritorial court, we note the difficulties involved in creating such

a jurisdiction, as stated in the Secretary-General's report.

We share the view of Russia that the rejection expressed by the authorities of Puntland and Somaliland, as well as of the Transitional Federal Government, of such an institution is not a constructive position in the face of a problem whose proportions exceed the country's current response capacity. Gabon welcomes the availability and willingness of Tanzania to host the Somali extraterritorial court. We call on all stakeholders to continue discussions and consultations so as to reach a consensus on this question.

I now resume my functions as President of the Council.

I give the floor to the representative of Somalia.

Mr. Mohamed (Somalia): First of all, Mr. President, let me thank you and your able team for your work in the presidency of the Security Council for the month of June.

I am not here to make a statement but rather to deliver a brief message on behalf of the highest level of the Somali Government.

Somalia attaches great importance to the issue of piracy. We welcome the Secretary-General's report (S/2011/360), and we greatly appreciate the comprehensive briefing by Patricia O'Brien and the work she and her team perform. But due to recent political developments on Somalia, culminating in a peace agreement brokered by the President of Uganda and the Special Representative of the Secretary-General, Mr. Mahiga, and ultimately the resignation of the Prime Minister of Somalia last week, Somalia unfortunately does not have the time or energy to digest the report.

Still, at the same time, we want to reiterate to the Council the utmost importance we attach to piracy. As soon as we form a new government — and the President of Somalia is going to appoint a new Prime Minister and council of ministers very soon, possibly as early as this week or next week — as soon as we complete the process of forming a new government of Somalia, we will provide our input and advice to the Council regarding the report. We look forward to working with the Council and Patricia O'Brien on the way forward on this issue, but in the meantime I reiterate the great importance Somalia attaches to the issue of piracy.

The President (*spoke in French*): I thank the representative of Somalia for his statement.

I now give the floor to Ms. O'Brien, to respond to comments and statements made by Member States.

Ms. O'Brien: I would like very briefly to acknowledge the great interest demonstrated by Member States in the debate and the close attention with which the Secretary-General's report (S/2011/360) has been analysed.

I would like to take this opportunity to reiterate once again the Secretary-General's deep commitment to this issue and his concern about continuing concerns that we have relating to piracy. My Office and other relevant United Nations offices will continue to contribute proactively to finding solutions to the complex problems of piracy off the coast of Somalia, and I of course stand ready to assist the Security Council in any way I can as it takes forward its deliberations on the basis of the Secretary-General's report.

The President (*spoke in French*): There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at noon.